

BEYOND THE SHARĪ'AH:
SIYĀSAH SHAR'IYYAH AND ITS APPLICATION
IN MALAYSIA

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Siyāsah shar'iyyah or shari'ah-oriented policy is generally seen as an instrument of flexibility and pragmatism. It is designed to serve the cause of justice and good government, especially when the rules of shari'ah fall short of addressing a certain situation or development. As the term suggests, the policy measures that are taken in the name of *siyāsah shar'iyyah* must be shari'ah-compliant, as the purpose is generally to facilitate rather than circumvent the implementation of shari'ah. Rules of procedure, policy decisions, legislative and administrative measures that are laid down and taken for the purpose would thus fall within the ambit of *siyāsah shar'iyyah*.

Although some commentators have attempted to confine *siyāsah shar'iyyah* to administrative measures while others have singled out criminal procedure and punishment as the main areas of its application, our analysis shows that it is not confined to either. There is also a view that *siyāsah* only applies outside the substantive shari'ah, whereas according to an opposite view, shari'ah and *siyāsah* go hand and that shari'ah is deficient without *siyāsah*. I shall elaborate some of these views in the following pages and advocate the hypothesis that no unnecessary restrictions should be imposed on the scope and subject matter *siyāsah shar'iyyah*.

The first part of this essay explores the basic idea of *siyāsah shar'iyyah* by drawing on a selection of opinions from those who have contributed to this theme, including Ibn Taymiyyah (d. 728/1327), and his disciple Ibn Qayyim al-Jawziyyah, Ibn Farḥūn (d. 799/1401), and more recently 'Abd al-Wahhāb Khallāf (d. c. 1955), and Ali Jād al-Ḥāq among others; while the second part addresses the application of *siyāsah shari'yyah* in Malaysia.

I. Definition and Scope: A Juristic Analysis

Siyāsah shar‘iyyah means government in accordance with the goals and objectives of shari‘ah. In its widest sense *siyāsah shar‘iyyah* applies to all government policies, be it in areas where the shari‘ah provides explicit guidelines or otherwise.¹

Ibn Qayyim al-Jawziyyah quoted Ibn ‘Aqīl (d. 513/1119), to the effect that *siyāsah* is “that action through which the people are brought closer to prosperity.” Elaborating on this, Ibn Qayyim characterised *siyāsah shar‘iyyah* as “any measure which brings the people nearer to beneficence (*ṣalāh*), and moves them further away from corruption (*fasād*), even though the measure in question has not been approved by the Prophet, peace be on him, nor regulated by a revelation. Anyone who says that there is no *siyāsah shar‘iyyah* where the shari‘ah itself is silent is wrong and has misunderstood the companions.”² Ibn Qayyim divided *siyāsah* into two types, oppressive policy (*siyāsah ḡālimah*) which the shari‘ah forbids, and just policy (*siyāsah ‘ādilah*) which serves the cause of justice, even it may at times depart from the letter of an injunction in favour of its spirit. Since justice and good government are the principal goals of *siyāsah ‘ādilah*, measures that are taken in pursuit of it are bound to be in harmony with the shari‘ah. Whereas *siyāsah ḡālimah* pursues the self-interest and prejudice of rulers to the detriment of the community at large, *siyāsah ‘ādilah* is based on moderation which shuns both harshness and laxity and does not sacrifice public interest for the indulgent desires of the few.³

¹ Cf. Mohammad Hashim Kamali. “*Siyāsa Shar‘iyya* or the policies of Islamic Government.” *The American J. of Islamic Social Sciences* 6 (1989), 59–81 at 60.

² Ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-Ḥukmiyyah fi’-l-Siyāsah al-Shar‘iyyah*. (Cairo: al-Mu’assasah al-‘Arabiyyah li’-l-Ṭabā‘ah, 1380/1961), 16.

³ Ibn Qayyim, *al-Ṭuruq al-Ḥukmiyyah*, 16.